IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 1000 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HAJI ABDUL REHMAN HAJI GAFURBHAI VOHRA - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR PRADEEP PATEL for Applicant(s) : 1,
MR.DIPEN DESAI APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 25/09/2007

ORAL JUDGMENT

1. The petitioner has approached this Court under the provisions of Section 397 of the Code of Criminal Procedure, 1973 (for short, “The Code”) with the prayer to set aside order dated 02.12.2005 of learned Additional Sessions Judge

(7th F.T.C.), Anand in Criminal Misc. Application No.723 of 2004, whereby the order of learned J.M.F.C. releasing the petitioner on bail was set aside.

2. The petitioner is stated to have been chargesheeted for the offences punishable under Sections 420,406 and 114 of the Indian Penal Code, 1860 pursuant to M. Case No.69 of 2003 registered in Anand Town Police Station. The criminal case came to be registered against the petitioner and two other accused persons upon a complaint filed by Authorised Officer of Anand Urban Co-operative Bank Limited with the main allegations of cheating and breach of trust after obtaining loans and financial facilities from the complainant.

3. According to the petitioner, the dispute between the petitioner and the complainant is purely of a civil nature. The first anticipatory bail application of the petitioner, being Criminal Misc. Application No.503 of 2003, was allowed on 11.12.2003 by learned Joint District Judge, Anand on condition, *inter alia,* of depositing with the complainant bank entire amount due within 10 days. Therefore, the petitioner approached this Court for deletion of that condition but, before any order could be

passed, the aforesaid order granting anticipatory bail had elapsed on completion of 90 days. The petitioner, therefore, again made an application, being Criminal Misc. Application No.155 of 2004 seeking relaxation of the earlier condition and the Court allowed that application on 24.03.2004 with condition, *inter alia,* that the petitioner should pay Rs.5,00,000/- on or before 30.04.2004 to the complainant bank and further condition to pay Rs.1,00,000/- till total amounts due were paid. The aforesaid conditions were admittedly never complied and the petitioner came to be arrested on 21.07.2004. Immediately on the same day, the petitioner moved regular bail application under the provisions of Section 437 of the Code of Criminal Procedure and, on 29.07.2004, that application was allowed by a cryptic order and the petitioner was ordered to be released on bail on personal bond of Rs.10,000/- and a surety of like amount. That order only mentioned that, according to the petitioner, he had taken the loan from the bank after pledging his properties and also repaid the money at some intervals. Therefore, he was a defaulter and the bank had initiated civil proceeding by way of a Lavad Case; and hence, there was no question of the petitioner having cheated the bank. Considering those submissions and the provisions for punishment in such case,

the petitioner came to be released by that order. Being aggrieved, the State approached learned Additional Sessions Judge under the provisions of Sub-Section (2) of Section 439 for cancellation of bail. It was the judgment and order in that application which is the subject-matter of challenge. It may be pertinent to note here that even as the aforesaid order releasing the petitioner on bail was set aside by the impugned order on 02.12.2005, he was granted by the same order time up to 22.12.2005 to surrender. However, the petitioner approached this Court in the meantime and, while admitting the present petition on 21.12.2005, ad-interim relief staying operation of the impugned order was granted. That ad-interim relief was confirmed by order dated 30.01.2006 and hearing has been adjourned from time to time thereafter till this date.

4. It is noted in the elaborate impugned judgment, after perusal of the material placed before the Court, that the petitioner had allegedly mis-appropriated the principal amount of loan of Rs.8,50,000/- and never repaid any amount by way of installments or interest.

5. The petitioner appeared to have incurred liability of total Rs.13,09,963.33 ps., even as the goods placed under hypothication was not

found at the place of business of the petitioner when it was visited. It was further noted that the bank was managing public funds and recourse to civil remedies appeared to have become an excuse under which economic offences were perpetrated. Therefore, having regard to the approach and attitude of the petitioner, seriousness of the offence alleged against him and likely impact upon the society, the petitioner ought not to have been released on bail, according to the impugned order.

6. It was seen from the material placed on record that the petitioner had not placed on record or revealed in his application for bail the relevant facts of imposition of conditions in the earlier orders of the Sessions Court whereunder the petitioner was ordered to be released on anticipatory bail on condition of making repayment to the bank. Without disclosing those facts and without adverting to them and without even a cursory reference to the material appearing against the petitioner, the order to release him on bail was made. It was also conceded that the petitioner had, all throughout, never repaid any amount to the bank after filing of the criminal complaint. It was pointed out by learned A.P.P. Mr.Dipen Desai that the lower Court had even failed to impose minimal

conditions restricting movement of the petitioner and, therefore, the order by which the petitioner was ordered to be released on bail was clearly perverse, illegal and unsustainable.

7. Learned counsel for the petitioner Mr.Pradeep Patel relied upon several judgments in support of the argument that the conditions imposed upon the petitioner in the earlier orders granting him anticipatory bail were impractical and unnecessary and non-imposition of such condition in the order granting bail could not be a ground for setting it aside. He further submitted that imposition of such condition was unreasonable and, the petitioner being a victim of the poor financial condition occasioned by the riots in his area, it was proper for the Court to release him on bail. He also relied upon several judgments including the judgment dated 24.09.2003 of this Court (Coram: A.L. Dave, J.) in Criminal Revision Application No.455 of 2003 to submit that bail once granted can be cancelled only in cases where there were overwhelming, cogent and compelling circumstances; and a criminal court cannot exercise its power for recovery of amount of loan.

8. In view of the above facts and contentions, it is clear that the original order

granting bail to the petitioner was a cryptic and perverse order without even reference to any of the considerations relevant for grant of relief of bail. As held by the Hon'ble Supreme Court in **Puran etc. etc. V/s. Rambilas and Another etc.etc. [JT 2001(5) SC 226]** one such ground for cancellation of bail would be where ignoring material and evidence on record, a perverse order granting bail was passed in a henious crime and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would require that such a perverse order be set aside and bail be cancelled. When such serious offences of apparently taking away public money from the bank in the name of loan and not repaying it are on the rise and have a serious impact on the society, an arbitrary and wrong exercise of discretion by the trial court has to be corrected. That having been done in the instant case by the impugned order of learned Additional Sessions Judge, this Court would not be justified in interfering with the same in exercise of its restricted revisional jurisdiction. According to the statutory bar of Section 465 of the Code, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal or revision even on account of any error, omission or irregularity in

the complaint, summons, order or judgment or other proceedings, unless in the opinion of the Court, a failure of justice has in fact been occasioned thereby. In the facts of the present case, no failure of justice could be pointed out. Instead the impugned judgment and order is found and held to be elaborate and eminently just in the facts and circumstances of the case. Therefore, the petition is dismissed, Rule is discharged and interim relief is vacated with no order as to costs.

9. The request for keeping this order in abeyance for a period of six weeks made by learned counsel Mr.Patel for the petitioner is rejected, as there was no justification to grant it.

(D.H.WAGHELA, J.)

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